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6 Attorneys for Complainant

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8  
9 **BEFORE THE**  
**CALIFORNIA BOARD OF ACCOUNTANCY**  
**DEPARTMENT OF CONSUMER AFFAIRS**  
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. AC-2006-22

12 JAMES J. LAIRD  
13 P.O. Box 2222  
San Ramon, CA 94583-7222

**DEFAULT DECISION**  
**AND ORDER**

14 Certified Public Accountant Certificate No. CPA 72148

[Gov. Code, §11520]

15 Respondent.

16  
17 **FINDINGS OF FACT**

18 1. On or about August 16, 2006, Complainant Carol Sigmann, in her official  
19 capacity as the Executive Officer of the California Board of Accountancy, Department of  
20 Consumer Affairs, filed Accusation No. AC-2006-22 against James J. Laird (Respondent) before  
21 the California Board of Accountancy.

22 2. On or about September 20, 1996, the California Board of Accountancy  
23 (Board) issued Certified Public Accountant Certificate No. CPA 72148 to Respondent. The  
24 Certified Public Accountant Certificate was in full force and effect at all times relevant to the  
25 charges brought herein and expired on April 30, 2005, and has not been renewed.

26 3. On or about September 13, 2006, Gracie Johnson, an employee of the  
27 Department of Justice, served by Certified and First Class Mail a copy of the Accusation  
28 No. AC-2006-22, Statement to Respondent, Notice of Defense, Request for Discovery, and

1 Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record  
2 with the Board, which was and is P.O. Box 2222, San Ramon, CA 94583-7222. A copy of the  
3 Accusation and Declaration of Service are attached as Exhibit A, and are incorporated herein by  
4 reference.

5 4. Service of the Accusation was effective as a matter of law under the  
6 provisions of Government Code section 11505, subdivision (c).

7 5. Government Code section 11506 states, in pertinent part:

8 "(c) The respondent shall be entitled to a hearing on the merits if the respondent  
9 files a notice of defense, and the notice shall be deemed a specific denial of all parts of the  
10 accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of  
11 respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing."

12 6. Respondent failed to file a Notice of Defense within 15 days after service  
13 upon him of the Accusation, and therefore waived his right to a hearing on the merits of  
14 Accusation No. AC-2006-22.

15 7. California Government Code section 11520 states, in pertinent part:

16 "(a) If the respondent either fails to file a notice of defense or to appear at the  
17 hearing, the agency may take action based upon the respondent's express admissions or  
18 upon other evidence and affidavits may be used as evidence without any notice to  
19 respondent."

20 8. Pursuant to its authority under Government Code section 11520, the Board  
21 finds Respondent is in default. The Board will take action without further hearing and, based on  
22 the evidence before it, finds that the allegations in Accusation No. AC-2006-22 are true.

23 9. The total costs for investigation and enforcement are \$15,691.45 as of  
24 October 3, 2006.

25 **DETERMINATION OF ISSUES**

26 1. Based on the foregoing findings of fact, Respondent James J. Laird has  
27 subjected his Certified Public Accountant Certificate No. CPA 72148 to discipline.

28 2. A copy of the Accusation and Declaration of Service are attached.



**Exhibit A**

**Accusation No. AC-2006-22,  
and Declaration of Service**

BILL LOCKYER, Attorney General  
of the State of California  
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Attorneys for Complainant

BEFORE THE  
CALIFORNIA BOARD OF ACCOUNTANCY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. AC-2006-22

**JAMES J. LAIRD**  
P.O. Box 2222  
San Ramon, CA 94583-7222

**ACCUSATION**

**Certified Public Accountant Certificate No. CPA  
72148**

Respondent.

Complainant alleges:

**PARTIES AND JURISDICTION**

1. Carol Sigmann (Complainant) brings this Accusation under the authority of Section 5100 of the Business and Professions Code,<sup>1</sup> solely in her official capacity as the Executive Officer of the California Board of Accountancy, Department of Consumer Affairs.

2. On or about September 20, 1996, the California Board of Accountancy issued Certified Public Accountant Certificate Number CPA 72148 to JAMES J. LAIRD (Respondent). The Certificate expired on April 30, 2005, and has not been renewed.

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1. All statutory references are to the Business and Professions Code unless otherwise indicated.

1                   3.       Section 5100 of the Business and Professions Code provides, in relevant  
2 part, that, after notice and hearing the board may revoke, suspend or refuse to renew any permit  
3 or certificate granted, or may censure the holder of that permit or certificate, for unprofessional  
4 conduct which includes, but is not limited to, one or any combination of the causes specified  
5 therein, including:

6           5100(c)       Dishonesty, fraud, or gross negligence in the practice of public  
7                           accountancy.

8           5100 (g)       Willful violation of this chapter or any rule or regulation  
9                           promulgated by the board under the authority granted under this  
10                          chapter.

11          5100(i)       Fiscal dishonesty or breach of fiduciary responsibility of any kind.

12                   4.       Board Rule 52 (Title 16, Cal Code of Regs., § 52) provides that a "licensee  
13 shall respond to any inquiry by the Board or its appointed representatives within 30 days. The  
14 response shall include making available all files, working papers and other documents  
15 requested."

16                   5.       Section 5060 states that no person or firm may practice public accountancy  
17 under any name other than the name under which the person or firm holds a valid permit to  
18 practice issued by the Board.

19                   6.       Code sections 118(b) and 5109 provide in pertinent part that the  
20 suspension, expiration, cancellation, or forfeiture of a license issued by the Board shall not,  
21 deprive the Board of its authority to investigate, or to institute or continue a disciplinary  
22 proceeding against a licensee upon any ground provided by law, or to enter an order suspending  
23 or revoking the license or otherwise taking disciplinary action against the licensee on any such  
24 ground.

25                   7.       Section 5107, subdivision (a), states, in pertinent part:

26                   "The executive officer of the board may request the administrative law judge as  
27 part of the proposed decision in a disciplinary proceeding, to direct any holder of a permit or  
28 certificate found to have committed a violation or violations of this chapter to pay to the board all

1 reasonable costs of investigation and prosecution of the case, including, but not limited to,  
2 attorney's fees. The board shall not recover costs incurred at the administrative hearing."

3 8. Code section 5000.1 provides as follows: "Protection of the public shall  
4 be the highest priority for the California Board of Accountancy in exercising its licensing,  
5 regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with  
6 other interests sought to be promoted, the protection of the public shall be paramount."

7 *Statutes Related to the Evangelisti Matter*

8 9. Internal Revenue Code section 6075(a) states "Estate Tax Returns.  
9 Returns made under section 6018(a) (relating to estate taxes) shall be filed within 9 months after  
10 the date of the decedent's death."

11 10. The instructions to IRS Form 4768 entitled Application for Extension of  
12 Time to File a Return and/or Pay U.S. Estate Taxes, states that "the purpose of Form 4768 is to  
13 apply for an automatic 6-month extension of time to file Form 706."

14 *Statutes Related to the Cherrone Matter*

15 11. Internal Revenue Code section 172 entitled "Net Operating Loss  
16 Deduction" provides, in pertinent part, that "except as otherwise provided, a net operating loss  
17 for any taxable year [172(b)(1)(A)] shall be a net operating loss carry back to each of the 2  
18 taxable years preceding the taxable year of such loss, and [172(b)(1)(A)(i)] shall be a net  
19 operating loss carryover to each of the 20 taxable years following the taxable year of the loss.  
20 [172(b)(1)(A)(ii)]. . . . In the case of a net operating loss for any taxable year ending during 2001  
21 or 2002, subparagraph (A)(i) shall be applied by substituting "5" for "2" and subparagraph (F)<sup>2</sup>  
22 shall not apply. [172(b)(1)(H)]"

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28 2. Subparagraph F provides for the retention of 3-year carry back in certain cases.  
[172(b)(i)(F)].

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1 another letter on August 3, 2004, this time requesting the entire file related to the estate tax  
2 return. Based on Respondent's continued non-response, Mr. Evangelisti filed a complaint with  
3 the Board, which was received on August 9, 2004.

4 18. A transmittal letter for Form 1041 dated October 12, 2001, from  
5 Respondent to the IRS showed the letterhead "JAMES LAIRD Certified Public Accountant  
6 Professional Corporation." A client transmittal letter dated February 18, 2003, from Respondent  
7 to Mr. Evangelisti showed the letterhead "JAMES LAIRD Certified Public Accountant" only.  
8 However, the signature line showed "James Laird, CPA, Professional Corp." Board records do  
9 not reveal that Respondent has a corporation license registered with the Board.

10 19. On or about August 10, 2004, the Board sent a letter to Respondent  
11 informing him of Mr. Evangelisti's complaint, requesting a written response, and referencing  
12 Respondent's responsibility to return the client's original documentation. The Board did not  
13 receive a response.

14 20. On or about December 17, 2004, the Board sent a certified letter to  
15 Respondent. This letter referenced and enclosed the August 10 letter, and advised Respondent of  
16 his responsibility to respond to any inquiry from the Board. Respondent signed for the letter on  
17 December 21, 2004. Again, the Board did not receive a response.

18 21. Sometime between January 24, 2000, and July 23, 2000, Mr. Evangelisti  
19 went to Respondent's office and signed what he believed was a Form 706. Respondent told  
20 Mr. Evangelisti that Respondent would send him a copy of the Form 706, which never happened.  
21 Mr. Evangelisti paid \$3,900 to have the estate tax return, Form 706, prepared by another firm.  
22 The estate tax return was filed on or about February 9, 2005. (The extension prepared by  
23 Respondent dated January 24, 2000, shows the extended due date of the return as July 23, 2000.)  
24 The estate tax return had a refund due but the IRS would not allow the claim for refund (\$1,342)  
25 because the tax return was filed more than three years after the due date.

26 22. Mr. Evangelisti gave Respondent six checks totaling \$14,593, for the  
27 preparation of the estate tax return and trust tax returns.

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*The Constance Cherrone Matter*

23. In November of 2003, Constance Cherrone engaged Respondent to prepare an Application for Tentative Refund, IRS Form 1045.

24. The Form 1045 was not prepared until June 2004. Ms. Cherrone signed and mailed it to the IRS on June 23, 2004.

25. Ms. Cherrone paid Respondent \$2000 to prepare the Form 1045, Application for Tentative Refund (used to carry back a net operating loss), for 2002. The form shows a net operating loss of \$40,300 for 2002 being carried back to the second preceding tax year ending in December 31, 2000. The form shows a decrease in tax of \$11,940, which results in a refund of the same amount.

26. Ms. Cherrone contacted the IRS in December 2004 regarding the status of her Application for Tentative Refund and was informed that it had been rejected in July 2004. Ms. Cherrone was informed that the rejection notice had been sent to Respondent because he had Power of Attorney. Respondent had not informed Ms. Cherrone that her Application for Tentative Refund had been rejected.

27. Ms. Cherrone's Application for Tentative Refund carrying back her net operating loss two years, was rejected by the IRS because the loss was required to be carried back five years per Internal Revenue Code section 172.

28. Ms. Cherrone paid another tax preparer \$1,000 to prepare a Form 1045. This tax preparer's Form 1045 shows the 2002 net operating loss of \$40,300 being carried back to the fifth preceding tax year ending in December 31, 1997, and the fourth preceding tax year ending December 31, 1998. This form shows a total tax decrease of \$6,925 which results in a refund of the same amount.

*Respondent's Sister, Claudia Laird Radeke*

29. Claudia Laird Radeke, Respondent's sister and a beneficiary of their mother's trust, filed a complaint with the Board against Respondent alleging that, as the sole trustee of his mother's trust (a position he took upon the death of his mother) he breached his fiduciary duty as trustee of his mother's trust by failing to properly administer the trust. The

1 complaint was received on January 21, 2005.

2           30. On November 2, 2002, Respondent's mother died and as of January 2,  
3 2005, the estate had not been settled, as noted in Ms. Radeke's complaint letter. Nor had  
4 Respondent provided information or updates on the status of the trust to Ms. Radeke, as a  
5 beneficiary of the trust, despite Ms. Radeke's numerous requests.

6           31. Title 7.3 of the trust "Adequate Records", states:

7           Trustee shall be the custodian of the property constituting the Trust estate and  
8 shall be responsible for the maintenance of adequate records evidencing the Trust  
9 income and expenses, and for the preparation and filing of all required accounting,  
10 reports and tax returns. The records pertaining to any Trust herein created shall be  
11 open at all reasonable times to inspection by any beneficiary of any Trust, or by  
12 the representatives of any beneficiary. Any beneficiary shall have the right to  
13 demand an annual accounting of the administration of the Trust.

14           32. On April 25, 2004, Ms. Radeke faxed a letter to Respondent requesting a  
15 copy of the complete 2003 trust tax filing, Form 1041. This was never provided.

16           33. On May 28, 2004, Ms. Radeke mailed Respondent a certified letter and  
17 requested that he provide her with all tax related papers and forms, close out the estate, and make  
18 final distributions of the estate by January 15, 2005. The certified letter was received and signed  
19 for by Marcia Laird on June 2, 2004. No information was provided and no final distributions  
20 were made.

21           34. On August 31, 2004, Respondent sent an e-mail to Ms. Radeke. He stated  
22 that he was working on winding up the estate and that he would give all three of his siblings an  
23 update at the beginning of the next week. No update was ever received.

24           35. Ms. Radeke, along with two other siblings, sent a letter to Respondent on  
25 November 19, 2004, requesting the estate to be finalized and an accounting provided. Neither  
26 request was satisfied.

27           36. On March 31, 2005, Ms. Radeke's attorney sent a certified and regular  
28 mail letter to Respondent referencing Section 7.3 of the Trust and making a demand that by May

1 2, 2005, Respondent provide an annual accounting of the Trust commencing from the date the  
2 Trust was created to the current accounting period.

3 37. On May 5, 2005, Ms. Radeke's attorney sent a letter to Respondent's  
4 siblings stating that Respondent had failed to provide the requested Trust accountings. Although  
5 the March 21, 2005, certified letter was returned as unclaimed, the regular mail letter was not  
6 returned.

7 38. On March 4, 2005, the Board sent Respondent a certified and regular mail  
8 letter informing him of the complaint, and requesting a written response, and that he provide a  
9 copy of the 2003 trust tax return along with all accounting records for the year ending in  
10 December 31, 2003, and a copy of the most recent accounting. The certified letter was signed for  
11 by Respondent but no response was received.

12 39. A September 1, 2005 order signed by the Judge of the Superior Court and  
13 entered into the court record on September 12, 2005, removed Respondent as the trustee of the  
14 Trust and appointed George Holloway Moore as the temporary Successor Trustee. The order  
15 directed Respondent to prepare a full, complete and detailed accounting of his administration of  
16 the Trust since the date of his mother's death up to and including the date of the order.

17 40. On December 3, 2005, and December 7, 2005, Mr. Moore called the FTB  
18 and the IRS, respectively, and was informed that individual income tax returns were not filed for  
19 the decedent for 2002, 2003, and 2004.

20 41. Mr. Moore learned from the IRS that 124 1099s for years 2002, 2003, and  
21 2004 all had the decedent's social security number when, upon her death, they should have been  
22 reported under the trust identification number. All of her assets should have been put in the  
23 name of the trust by the trustee per California Probate Code section 16009.

24 42. In a letter dated January 24, 2006, Mr. Moore stated that his accounting of  
25 the estate accounts to date indicates that Respondent had withdrawn at least \$313,423.39 from  
26 various accounts for his personal interests, compared to \$60,000 in distributions for each of the  
27 remaining three beneficiaries. In addition, Respondent failed to comply with the September 1,  
28 2005 court order requiring a full accounting.

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1 Trust income and expenses, and for the preparation and filing of all required accounting, reports  
2 and tax returns."

3 48. Respondent breached his fiduciary responsibility as trustee of his mother's  
4 trust by failing to produce an annual accounting upon request of a beneficiary, by failing to  
5 designate trust property as property of the trust, and by failing to file the grantor's final tax return  
6 and tax returns for the trust.

7 49. Incorporating by reference the matters set forth in paragraphs 31 through  
8 45, and 49 through 51, Respondent's conduct constitutes multiple breaches of fiduciary duty to  
9 his siblings as trustee for their mother's trust, and thus constitutes multiple causes for discipline  
10 of his license for unprofessional conduct within the meaning of Code section 5100(i) (breach of  
11 fiduciary duty of any kind).

12 **THIRD CAUSE FOR DISCIPLINE**  
13 **Willful Violation of Board Regulations**  
14 **Bus. & Prof. § 5100(g)**

15 50. Complainant realleges paragraphs 19 through 20, 38, and 43 above, and  
16 incorporates them herein by reference as if fully set forth at this point.

17 51. Incorporating these matters by reference, cause for discipline of  
18 Respondent's license is established under Code section 5100(g) for willful violation of Board  
19 regulations in that he failed to respond to the Board's inquiries, consisting of multiple letters  
20 from the Board requesting information regarding the Evangelisti, Cherrone, and Radeke matters,  
21 in violation of Board Rule 52.

22 **FOURTH CAUSE FOR DISCIPLINE**  
23 **Name of Firm**  
24 **Bus. & Prof. § 5060**

25 52. Complainant realleges paragraph 18 above, and incorporates it herein by  
26 reference as if fully set forth at this point.

27 53. Incorporating this matter by reference, cause for discipline of  
28 Respondent's license is established under Code section 5060, in conjunction with Code section  
5100(g), for willful violation of the Accountancy Act in that he practiced under a name other  
than the name under which he holds his permit. Respondent practiced public accountancy under

1 "James Laird Certified Public Accountant Professional Corporation" but this name was not  
2 registered with the Board.

3 OTHER MATTERS

4 54. Pursuant to Code section 5107, it is requested that the administrative law  
5 judge, as part of the proposed decision in this proceeding, direct Respondent to pay to the Board  
6 all reasonable costs of investigation and prosecution in this case, including, but not limited to,  
7 attorneys' fees.

8 55. It is charged, in aggravation of penalty, that the Respondent took  
9 advantage of a position of trust to commit the offenses, and that Respondent knowingly made  
10 false or misleading promises or statements which impeded the administration of his mother's  
11 trust.

12 PRAYER

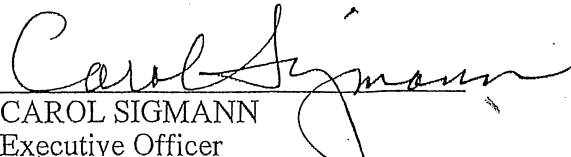
13 WHEREFORE, Complainant requests that a hearing be held on the matters herein  
14 alleged, and that following the hearing, the California Board of Accountancy issue a decision:

15 1. Revoking, suspending, or otherwise imposing discipline upon Certified  
16 Public Accountant Certificate Number CPA 72148, issued to JAMES J. LAIRD.

17 2. Ordering JAMES J. LAIRD to pay the California Board of Accountancy  
18 the reasonable costs of the investigation and prosecution of this case, pursuant to Business and  
19 Professions Code section 5107;

20 3. Taking such other and further action as deemed necessary and proper.

21 DATED: August 16, 2006

22   
23 CAROL SIGMANN  
24 Executive Officer  
25 California Board of Accountancy  
26 Department of Consumer Affairs  
27 State of California  
28 Complainant